IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3823 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

J SELVARANI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 3823 of 2004

MR JAL SOLI UNWALA for Petitioner No. 1-2

MR SS PATEL, APP for Respondent No. 1

MR MANISH R BHATT for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 09/09/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Unwala for the applicants, ld. APP Mr. Sudhanshu Patel for respondent

No.1 State and ld. counsel Mr. Manish Bhatt for respondent No.2 -original complainant. Rule. Service of Rule is waived by ld. APP Mr. Sudhanshu Patel for respondent No.1 and ld.counsel Mr. Manish Bhatt for respondent No.2 -original complainant. Rule is fixed forthwith.

2(i) Without prejudice to the rights and contentions of the parties as to the net amount due and payable to the original complainant -respondent No.2, it is submitted by ld. counsel appearing for the parties that for the complaint as to the amount of Rs.5 Lakh, the parties have settled the matter out of Court. Compromise is limited for the purpose of the amount mentioned in the complaint in question.

(ii) In compliance with the order passed by this Court, applicants have deposited Rs.3 Lakhs on earlier occasion vide Demand Draft No.092216 dated 18.06.2004 and it is submitted by ld. counsel Mr. Unwala for the applicants that again an amount of Rs.2 Lakh has been deposited with the Registry. Thus, total sum of Rs.5 Lakh is deposited by the applicants and is lying with the Registry of this Court.

3. The offence punishable under Sec.138 of The Negotiable Instruments Act is now otherwise compoundable and parties can settle the matter out of court. The wish of the complainant expressed by ld. counsel Mr. Bhatt to accept the fact of compromise arrived at so far as the amount of Rs.5 Lakh is concerned, can be accepted by the Court. This Court can say that as parties have compounded the offence out of Court and the complainant is ready to accept and withdraw the amount of Rs.5 Lakh, without entering into the further discussion.

4. It is true that normally the parties should be relegated to the trial Court to present the compromise arrived at between them for obtaining formal order of acquittal on compounding the offence, but in the present proceedings also, the Court can say that as parties have settled the matter, it is of no use continuing the proceedings and hence the same can be turned down.

5. In view of above, complaint being Complaint No.2414/2003 filed in the Court of ld. JMFC, Dholka for the offence punishable under Sec.138 of NI Act is ordered to be quashed on the consent shown by the original complainant in view of the fact that the parties have settled the complaint in question out of Court. One of the terms of settlement arrived at between the parties is

that the respondent no.2 -original complainant will be entitled to withdraw the entire sum of Rs.5 Lakh lying with the Registry over and above the amount of Rs.2500/ deposited by the applicants as costs. So, the Registry is directed to pay the amount of Rs.5 Lakh (Rs. Five Lakh only) + Rs.2500/ (Rs. two thousand five hundred only) by two different A/c Payee cheques drawn in favour of respondent no.2 -original complainant and both the cheques can be given to ld. counsel appearing for the original complainant i.e. Mr. Manish Bhatt. In view of the fact that complainant is going to get the entire sum of both the cheques in question and he has settled the matter out of Court with one accused, obviously, it would not be necessary for the trial Court to proceed with trial qua other accused. Say of the complainant is that the case is settled and he is not interested in pursuing criminal case against other two for this amount of Rs.5 Lakh. So, proceedings shall also stand terminated against all the accused persons. It will be open for the parties to place copy of this order before the ld. trial Court so that trial Court can conclude the proceedings accordingly. Order accordingly.

6. Rule is made absolute accordingly.

[C.K. BUCH, J]
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